Filed 12/9/08 In re K.J. CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re K.J. et al., Persons Coming Under the Juvenile Court Law.	B206296
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.J., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK31442)

APPEAL from a judgment and an order of the Superior Court of Los Angeles County. Terry T. Truong, Juvenile Court Referee. Affirmed.

Maureen L. Keaney, under appointment by Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

D.J. (father) appeals from the juvenile court's jurisdictional and dispositional orders establishing dependency jurisdiction over K.J. (born 12/96) and his three younger siblings: I.J. (born 8/98), E.J. (born 3/01), and S.J. (born 1/07). The juvenile court denied father reunification services. Father argues: (1) the juvenile dependency petition failed to state a basis for jurisdiction; (2) insufficient evidence supported the court's jurisdictional findings; and (3) the juvenile court abused its discretion by denying him reunification services. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 1997, the Los Angeles County Department of Children and Family Services (DCFS) took protective custody of K.J., then 10 months old. DCFS got involved after K.J. suffered second degree burns over 40 percent of his body. Doctors opined that K.J. was burned by being placed in hot liquid on his back and when hot liquid was poured over his abdomen. Father admitted he had placed K.J. in a bath without first checking the water temperature. A medical examination also revealed healed bruises on K.J.'s left calf and left cheek. The juvenile court sustained a dependency petition alleging that father and R.C. (mother) had subjected K.J. to unreasonable and neglectful acts. The juvenile court further sustained allegations that father's conduct endangered K.J.'s health and safety and placed him at further risk of serious, nonaccidental, physical harm. The parents received family reunification services from December 1997 to July 2000, and family maintenance services between July 2000 and January 2001. Dependency jurisdiction was eventually terminated.

In August 2007, the parents separated. The family law court ordered joint custody of the children.

2007 Detention

In November 2007, DCFS again intervened after receiving a report that father had physically abused K.J. Father had punished K.J. by repeatedly whipping him with a black tube, causing visible bruises on his buttocks. K.J. informed a DCFS social worker that father had hit him with a belt on more than one occasion. I.J. confirmed K.J.'s statements and told the social worker that father once had whipped him (I.J.) with a belt

12 times as punishment for not cleaning the house. I.J. also reported that father slapped 10-month-old S.J.'s leg when she moved while father was changing her diaper, or when she touched the television. I.J. feared father because he often screamed at the children.

E.J. also told the social worker that when K.J. did not do what father asked, father whipped him with a black cord. E.J. similarly reported that father screamed and spanked S.J. when she moved while he was changing her diaper. Mother told the social worker that father was very controlling but that she had never before heard that he hit the children. She denied any domestic violence in her relationship with father.

On November 21, 2007, the juvenile court detained the children from father and released them to mother.

Jurisdiction and Disposition Report

DCFS conducted more in-depth interviews with the children and mother in connection with the jurisdiction and disposition report. In addition to his previous statements, K.J. told the social worker that he was afraid of father because father hit him and did not let the children play. K.J. reported that father once hit him with a bat and sprained his ankle. Father told K.J. to tell mother that he had sprained his ankle while skateboarding. According to K.J., father made him bleed by "back-handing" him in the nose, and by hitting him with a hose from a fish tank. Father's past beatings left him marked and bruised. K.J. reported that father also hit his younger brother and sister (I.J. and E.J.) and left marks on their buttocks. In addition, K.J. said father "popped" his infant sister (S.J.) and slapped her on the leg.

In a separate interview, I.J. also said that father spanked him and K.J. with a belt, a cord, and a piece of wood. I.J. recalled having bruises after father's beatings. E.J. told the social worker that father often visited her school but she did not want him there for fear that he would get mad "like he always does." E.J. also reported that father whipped her with a belt and left bruises.

The three older children told the social worker that father hit mother when they lived together.[1] They recounted seeing father threaten mother, either by chasing her with an ax, or by holding a knife to her throat. The children reported that father drank, sometimes to the point of being ill, and smoked "weed." K.J. said that father sold marijuana from their home and in the park. According to I.J., if one of the children misbehaved while father was drinking with a particular friend, father and the friend would laugh and whip the misbehaving child.

Despite her previous denial, mother admitted to the social worker that father was physically violent with her before the separation. Mother indicated that father had choked her, held a knife to her throat on one occasion, and threatened her with an ax. At the time of the interview, father still called mother several times each day, not necessarily to speak with the children, but to try to reunite with her. Mother admitted that father drank a lot, but she claimed she never knew that he also used drugs. Mother maintained she did not know that father was hitting any of the children until the November 2007 incident.

Father had a different explanation for the November 2007 incident. He claimed that he started to punish K.J. with a belt for misbehaving at school, but stopped when K.J. complained that his buttocks were hurt and bruised because of skateboarding injuries. Father denied hitting the children with anything other than a belt. He also denied ever hitting his infant daughter, S.J. Father alleged that mother and the maternal grandmother were conspiring to keep the children away from him. He asserted that he was never violent with mother and only restrained her from striking him. Father denied any drug use and claimed he only drank alcohol on special occasions.

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[1] S.J. was less than one year old at the time of the interviews.

Jurisdiction and Disposition Hearing

On January 7, 2008, DCFS filed a first amended petition. The petition alleged jurisdiction under Welfare and Institutions Code, section 300, subdivisions (a), (b), and (j).[2] At the jurisdiction and disposition hearing, father called K.J. as a witness. K.J.'s testimony was consistent with his previous statements to the social worker. Although K.J. admitted that he had been in trouble before for lying, he claimed to testify truthfully at the hearing. Father's testimony was also largely consistent with his statements to the social worker. He asserted that K.J.'s testimony was false. Mother testified about father's violence and explained that she was too scared to call the police when it was happening. She testified that she never told the DCFS social worker that father was not violent with her.

The juvenile court dismissed one count of the petition alleging jurisdiction under section 300, subdivision (b) (count (b)(5)), but otherwise sustained the petition as amended to conform to proof. The court did not find father's testimony credible, and noted that I.J. and E.J.'s statements corroborated K.J.'s testimony. The court further found that section 361.5, subdivision (b)(3) applied and accordingly did not order DCFS to provide family reunification services to father. The court found that there was no clear and convincing evidence that family reunification with father would be in the best interests of the children. Visitation was ordered for father. This appeal followed.

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[2] All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

DISCUSSION

I. Sufficiency of the Petition

Father contends that the dependency petition's allegations were insufficient to state a basis for jurisdiction over the children. However, he did not challenge the petition in the juvenile court. Respondent argues that father forfeited the argument.

There is a split of authority on whether a challenge to the sufficiency of a dependency petition is forfeited if not raised in the juvenile court. Most recently the First District concluded that sufficiency challenges are waived if not raised below. (*In re David H.* (2008) 165 Cal.App.4th 1626 (*David H.*).) The *David H.* court rejected the Third District's contrary approach in *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397. Division Five of this appellate district has also concluded that challenges to the sufficiency of a dependency petition are forfeited if not raised in the juvenile court. (*In re James C.* (2002) 104 Cal.App.4th 470, 480-481.)

We need not resolve this conflict. Despite the headings contained in father's brief on appeal, he does not actually argue that the petition itself was insufficient. Instead, father describes the evidence underlying the petition and asserts that the evidence was insufficient to sustain the petition's allegations. As respondent points out, this is different from contending that the petition's allegations failed to state a basis for jurisdiction. Father fails to make any arguments to support the latter contention. Despite the argument headings in father's brief, we need not consider an appellant's contentions that are not supported by any legal argument. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) Instead, we will address the issue that was fully briefed by both parties: whether sufficient evidence supported the jurisdictional findings. (*In re Athena P.* (2002) 103 Cal.App.4th 617, 627-628 [in the absence of prejudicially inadequate notice of the allegations, the facial insufficiency of the petition is harmless error if the evidence presented at the hearing establishes jurisdiction].)

II. Substantial Evidence Supported the Juvenile Court's Jurisdictional Findings

"On appeal from an order making jurisdictional findings, we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value. [Citation.]" (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185 (*Veronica G.*).)

The petition as sustained asserted jurisdiction under section 300, subdivisions (a), (b), and (j). Section 300, subdivision (a) authorizes jurisdiction where "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian." Section 300, subdivision (b) provides in relevant part that the court may assert jurisdiction where "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child." This includes the parent's inability to provide regular care for the child due to substance abuse. (§ 300, subd. (b).) Section 300, subdivision (j) allows the court to take jurisdiction over the sibling of a child who has been abused or neglected as defined in subdivisions (a) or (b).

A. Counts based on physical harm (counts (a)(1-4), (b)(1-4) & (j)(1-4))

Counts (a)(1-4), (b)(1-4), and (j)(1-4) of the petition were based on father's physical punishment of the children. These counts also referenced father's conduct in 1997 that led to the first dependency adjudication of K.J.

Substantial evidence supported the counts. The three older children indicated that father hit them with a belt or other objects, causing marks and bruising. They further reported that father hit or slapped their infant sister. Although the court will not take jurisdiction under subdivision (a) if a parent uses reasonable and appropriate spanking to the buttocks, this is only when there is no evidence of serious physical injury. A parent's spanking or use of a belt that causes bruises constitutes serious physical harm within the meaning of subdivision (a). (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 438-439;

Veronica G., *supra*, 157 Cal.App.4th at pp. 185-186.) Here, the juvenile court could reasonably find that father's actions caused or risked causing the children serious harm and were not reasonable and appropriate spankings.

Father insists that there was no evidence that his punishment of the children caused bruises. This argument simply ignores the statements of the three older children that father's whippings left them marked and bruised. Father essentially asks us to reweigh the evidence and determine that he was more credible than the children. This is not our role on appeal. (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333.) We defer to the juvenile court on issues of credibility, and here the juvenile court believed the statements of the children. Moreover, father admitted that in November 2007, he hit K.J. with a belt, and mother and the DCFS social worker saw the bruises K.J. attributed to father's beating. In sum, there was sufficient evidence for the juvenile court to find that father had inflicted serious physical harm on the children and that they were at substantial risk of future physical harm at his hands. (*Veronica G.*, *supra*, 157 Cal.App.4th at pp. 185-186 [children's testimony on physical abuse was substantial evidence].)

B. Counts based on domestic violence and substance abuse (counts (b)(6) & (b)(7))

Substantial evidence also supported the juvenile court's findings on the two counts of the petition that were based on conduct other than father's physical abuse of the children.

i. Count (b)(6)

Count (b)(6) alleged that father and mother had a history of domestic violence and violent altercations in front of the children. A parent neglects a child within the meaning of section 300, subdivision (b), by exposing the child to domestic violence. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) In this case, there was substantial evidence that father engaged in violent confrontations with mother while the children were present. The three older children described father threatening mother in frightening and dangerous ways, such as chasing her with an ax and holding a knife to her neck. During the ax accident, E.J. believed father was going to "cut [mother's] neck off," and she even

intervened to ask father why he was going to attack mother with the ax. Mother also eventually confirmed that she and father had violent altercations. The juvenile court credited this testimony. Sufficient evidence thus supported the court's assertion of jurisdiction under section 300, subdivision (b), based on domestic violence.

Father further argues that because he and mother were separated there was no ongoing or future risk to the children because of domestic violence. However, there was evidence that father had not accepted that his relationship with mother was over. Father admitted that he wanted to get back together with mother and he believed there was a possibility it could still happen. Mother indicated that father had called her as many as 23 times in one day. The juvenile court could reasonably conclude that the parent's separation did not eliminate the possibility that harm would come to the children as a result of domestic violence. In fact, the juvenile court issued a temporary restraining order against father, demonstrating the court's conclusion that father posed an ongoing risk to mother and the children. The juvenile court reasonably found that the evidence supporting count (b)(6) stated a basis for jurisdiction, despite the parents' separation.

ii. Count (b)(7)

Count (b)(7) of the petition alleged that father's alcohol and marijuana use endangered the children's physical and emotional health, and placed the children at risk of physical and emotional harm. There was sufficient evidence to sustain this count. The three older children indicated that they had often seen father smoking marijuana. According to K.J., father sold marijuana outside of their home and in the park. E.J. indicated that father drank to excess. Mother confirmed that father came home drunk three to four times each week when they lived together.

I.J.'s statements to the social worker revealed the adverse effects of father's substance abuse on the children. I.J. reported that father once left the house carrying S.J. when he was drunk and mother refused to let him drive. I.J. also indicated that when father drank with his friend, the friend and father would together beat the children if they misbehaved. I.J. and E.J. were both troubled by father's alcohol and drug use.

The children's statements not only provided evidence of father's substance abuse, but also indicated that his conduct created risk of neglect and harm to the children.[3] The trial court reasonably could find jurisdiction under subdivision (b) based on father's substance abuse. Father by and large ignores the evidence in his arguments on appeal and tries to discredit K.J.'s testimony. However, as stated above, we do not reweigh the evidence and are bound by the trial court's credibility determinations.

iii. Multiple bases for jurisdiction were proper

Father maintains that if jurisdiction was proper under section 300, subdivision (b) (counts (b)(1)-(b)(4)), the other counts should be stricken. The argument is untenable. It is true that the court may take jurisdiction over a child based on only one statutory ground. (§ 300.) But nothing prevents the court from sustaining allegations under different statutory bases so long as substantial evidence supports each of the court's jurisdictional findings. Such was the case here. Father's argument for striking counts (a)(1) through (a)(4), (b)(6), and (b)(7), assumes that there was insufficient evidence to support the court's findings on these counts. However, as discussed above, we have concluded that the challenged jurisdictional findings were in fact supported by substantial evidence. The juvenile court had no reason to dismiss counts that established additional bases for the exercise of jurisdiction over the children.

Father's reliance on *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738 (*Blanca P.*), is misplaced, as is his invocation of the "confession dilemma." In *Blanca P.*, the juvenile court refused to return four siblings to their parents based on allegations that father had sexually abused one of the children. No court ever examined whether the allegations were supported by evidence, and a psychologist determined it was unlikely that father had molested the child. (*Id.* at pp. 1741-1742.) Yet, the juvenile court concluded that it would be detrimental to return the children to their parents, relying in part on the parents' refusal to acknowledge that sexual molestation had occurred. (*Id.* at

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3 In this way, the case before us significantly differs from *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322.

p. 1752.) The appellate court directed the juvenile court to hold a new hearing on the molestation allegations. (*Id.* at p. 1759.) Here, in contrast, the juvenile court took evidence on all of the counts. We have already concluded that substantial evidence supported the resulting jurisdictional findings. Father has not demonstrated that the juvenile court's findings were predicated on unsupported allegations. *Blanca P.* is therefore inapposite.

III. The Juvenile Court Did Not Err in Denying Father Reunification Services

Father contends that the juvenile court erred by denying him reunification services. We disagree.

Section 361.5, subdivision (b) identifies situations in which the juvenile court need not provide reunification services to a parent. Under section 361.5, subdivision (b)(3), the court need not provide reunification services when it finds by clear and convincing evidence that "the child or sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse."[4] If section 361.5, subdivision (b)(3) applies, the court may not order reunification services unless it finds by clear and convincing evidence that reunification is in the best interests of the child. (§ 361.5, subd. (c).)

Father contends that section 361.5, subdivision (b)(3) does not apply to this case because although the juvenile court previously took jurisdiction over K.J., the family was

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[4] Under section 361.5, subdivision (b)(7), the juvenile court need not provide reunification services when the court finds that "the parent is not receiving reunification services for a sibling or a half sibling of the child pursuant to paragraph (3), (5), or (6)." We infer that the juvenile court made an implicit finding under this provision to deny father reunification services as to I.J., E.J., and S.J. (*In re S.G.* (2003) 112 Cal.App.4th 1254, 1260.)

later reunified and the court terminated the dependency. He asserts that the provision should be construed to apply only in the context of an ongoing dependency when a subsequent or supplemental petition is filed. Father presents a question of law that we consider de novo. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300-301.) To determine the proper interpretation of section 361.5, subdivision (b)(3), we first "examine the actual language of the statute, giving the words their ordinary, everyday meaning. [Citation.] If the meaning is without ambiguity, doubt, or uncertainty, then the language controls and there is nothing to 'interpret' or 'construe.' [Citation.]" (*Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1143.)

Section 361.5, subdivision (b)(3) applies when the child "has been previously adjudicated a dependent." The phrase "previously adjudicated a dependent" indicates the existence of multiple dependency adjudications. While the provision may apply to an ongoing dependency where subsequent or supplemental petitions are filed, nothing in the provision or the surrounding context supports an interpretation that limits "previously adjudicated" to *only* those two situations. The plain language of section 361.5, subdivision (b)(3) does not eliminate the court's ability to deny reunification services based on a previous dependency that was terminated after the parent and child reunified.[5]

Not only does the express language of the provision fail to support father's argument, the caselaw he relies upon is equally unhelpful to his position. In fact, *Deborah S. v. Superior Court* (1996) 43 Cal.App.4th 741 (*Deborah S.*), forces a comparison with an earlier version of the statute and undermines father's argument. In *Deborah S.*, the court described section 361.5, subdivision (b)(3) as permitting denial of

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5 We also note the difference between section 361.5, subdivision (b)(3), which uses the term "previously adjudicated," and section 361.5, subdivision (b)(6), which authorizes denial of reunification services when the court finds that the child "*has been* adjudicated a dependent" due to severe sexual abuse or infliction of severe physical harm. We read the language of section 361.5, subdivision (b)(6) to indicate an ongoing dependency, while section 361.5, subdivision (b)(3)'s contrasting language encompasses a past dependency adjudication.

reunification services when "the minor has been removed a second time in the course of the same dependency on account of physical or sexual abuse[.]" (*Id.* at p. 751.) However, the court in *Deborah S.* described the 1996 version of the statute. In 1996, former section 361.5, subdivision (b)(3) contained the sentence: "[This] section is not applicable if the jurisdiction of the juvenile court has been dismissed prior to the additional abuse." (Stats. 1996, ch. 101, § 1, p. 469.) Subsequent versions of the statute, including the current version, do not include this limiting sentence. This contrast only supports the conclusion that the current version of section 361.5, subdivision (b)(3) was changed to address just this situation and therefore applies even when the juvenile court has terminated its previous dependency jurisdiction.

Nor does *Rosa S. v. Superior Court* (2002) 100 Cal.App.4th 1181 (*Rosa S.*) change our conclusion. In *Rosa S.*, the juvenile court asserted jurisdiction over a child, Vanessa, when she was 15 months old. The dependency was eventually terminated after the mother received reunification and family maintenance services. (*Id.* at p. 1184.) Eight months after dependency jurisdiction was terminated, new dependency proceedings were initiated. The juvenile court asserted jurisdiction because the mother had abandoned Vanessa and failed to protect her. (*Ibid.*) The juvenile court denied reunification services. (*Id.* at p. 1185.) The appellate court addressed only one issue: "whether a parent is precluded from receiving reunification services solely because she received 18 months of services in a previous dependency proceeding where she successfully reunified with her child." (*Id.* at p. 1188.) The court determined that a parent is not precluded from receiving reunification services on that basis alone. (*Ibid.*) The court's discussion did not address section 361.5, subdivision (b)(3).[6] Indeed, the juvenile court in *Rosa S.* had not applied any of the section 361.5, subdivision (b) exceptions to deny reunification services.

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6 Indeed, section 361.5, subdivision (b)(3) would not have applied in *Rosa S.* because the case did not involve physical or sexual abuse. Instead, the court considered only neglect allegations.

Father relies on the *Rosa S.* court's statement that "none of the 15 exceptions authorize the denial of services based on a previous dependency where reunification was successful." (*Rosa S., supra*, 100 Cal.App.4th at p. 1188.) However, since the sole issue confronting the *Rosa S.* court did not involve the application of the section 361.5, subdivision (b) exceptions, the court's statement is dicta that does not control in this case. Further, for the reasons explained above, we disagree with the *Rosa S.* court's statement as it relates to section 361.5, subdivision (b)(3).

In sum, the language of section 361.5, subdivision (b)(3) does not support father's contentions. In addition, father's arguments relying on *Deborah S.* and *Rosa S.* are unavailing. The juvenile court did not err in applying section 361.5, subdivision (b)(3) to deny father reunification services.[7]

DISPOSITION

The judgment and order are affirmed.

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BIGELOW, J.

We concur:

COOPER, P. J.

FLIER, J.

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[7] To the extent Father also argues the trial court's denial of reunification services was wrong under section 361.5 as we have interpreted it, we note that the parties highlight a split of authority on the appropriate standard of review. Some cases have applied an abuse of discretion standard (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470), while others employ a substantial evidence standard (*In re Harmony B.* (2005) 125 Cal.App.4th 831.) In this case, we conclude that under either standard of review the court's finding under section 361.5, subdivision (b)(3) was appropriate.